



# House of Representatives

## File No. 519

General Assembly

February Session, 2006

**(Reprint of File No. 391)**

House Bill No. 5468  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 13, 2006

### **AN ACT CONCERNING CERTIFICATE OF NEED CAPITAL EXPENDITURE THRESHOLDS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (4) of subsection (a) of section 19a-638 of the  
2 2006 supplement to the general statutes is repealed and the following  
3 is substituted in lieu thereof (*Effective July 1, 2006*):

4 (4) Except as provided in sections 19a-639a to 19a-639c, inclusive, as  
5 amended by this act, each applicant, prior to submitting a certificate of  
6 need application under this section, section 19a-639, as amended by  
7 this act, or under both sections, shall submit a request, in writing, for  
8 application forms and instructions to the office. The request shall be  
9 known as a letter of intent. A letter of intent shall include: (A) The  
10 name of the applicant or applicants; (B) a statement indicating whether  
11 the application is for (i) a new, replacement or additional facility,  
12 service or function, (ii) the expansion or relocation of an existing  
13 facility, service or function, (iii) a change in ownership or control, (iv) a  
14 termination of a service or a reduction in total bed capacity and the  
15 bed type, (v) any new or additional beds and their type, (vi) a capital

16 expenditure over [one] three million dollars, (vii) the purchase, lease or  
17 donation acceptance of major medical equipment costing over [four  
18 hundred thousand] three million dollars, (viii) a CT scanner, PET  
19 scanner, PET/CT scanner, MRI scanner, cineangiography equipment, a  
20 linear accelerator or other similar equipment utilizing technology that  
21 is new or being introduced into the state, or (ix) any combination  
22 thereof; (C) the estimated capital cost, value or expenditure; (D) the  
23 town where the project is or will be located; and (E) a brief description  
24 of the proposed project. The office shall provide public notice of any  
25 complete letter of intent submitted under this section, section 19a-639,  
26 as amended by this act, or both, by publication in a newspaper having  
27 a substantial circulation in the area served or to be served by the  
28 applicant. Such notice shall be submitted for publication not later than  
29 fifteen business days after a determination that a letter of intent is  
30 complete. No certificate of need application will be considered  
31 submitted to the office unless a current letter of intent, specific to the  
32 proposal and in compliance with this subsection, has been on file with  
33 the office at least sixty days. A current letter of intent is a letter of  
34 intent that has been on file at the office up to and including one  
35 hundred twenty days, except that an applicant may request a one-time  
36 extension of a letter of intent of up to an additional thirty days for a  
37 maximum total of up to one hundred fifty days if, prior to the  
38 expiration of the current letter of intent, the office receives a written  
39 request to so extend the letter of intent's current status. The extension  
40 request shall fully explain why an extension is requested. The office  
41 shall accept or reject the extension request not later than five business  
42 days from the date it receives such request and shall so notify the  
43 applicant.

44 Sec. 2. Section 19a-639 of the 2006 supplement to the general statutes  
45 is repealed and the following is substituted in lieu thereof (*Effective July*  
46 *1, 2006*):

47 (a) Except as provided in sections 19a-639a to 19a-639c, inclusive, as  
48 amended by this act, each health care facility or institution, including,  
49 but not limited to, any inpatient rehabilitation facility, any health care

50 facility or institution or any state health care facility or institution  
51 proposing (1) a capital expenditure exceeding [one] three million  
52 dollars, (2) to purchase, lease or accept donation of major medical  
53 equipment requiring a capital expenditure, as defined in regulations  
54 adopted pursuant to section 19a-643, as amended, in excess of [four  
55 hundred thousand] three million dollars, or (3) to purchase, lease or  
56 accept donation of a CT scanner, PET scanner, PET/CT scanner, MRI  
57 scanner, cineangiography equipment, a linear accelerator or other  
58 similar equipment utilizing technology that is new or being introduced  
59 into this state, including the purchase, lease or donation of equipment  
60 or a facility, shall submit a request for approval of such expenditure to  
61 the office, with such data, information and plans as the office requires  
62 in advance of the proposed initiation date of such project.

63 (b) (1) The commissioner shall notify the Commissioner of Social  
64 Services of any certificate of need request that may impact on  
65 expenditures under the state medical assistance program. The office  
66 shall consider such request in relation to the community or regional  
67 need for such capital program or purchase of land, the possible effect  
68 on the operating costs of the health care facility or institution and such  
69 other relevant factors as the office deems necessary. In approving or  
70 modifying such request, the commissioner may not prescribe any  
71 condition, such as but not limited to, any condition or limitation on the  
72 indebtedness of the facility or institution in connection with a bond  
73 issue, the principal amount of any bond issue or any other details or  
74 particulars related to the financing of such capital expenditure, not  
75 directly related to the scope of such capital program and within control  
76 of the facility or institution.

77 (2) An applicant, prior to submitting a certificate of need  
78 application, shall submit a request, in writing, for application forms  
79 and instructions to the office. The request shall be known as a letter of  
80 intent. A letter of intent shall conform to the letter of intent  
81 requirements of subdivision (4) of subsection (a) of section 19a-638, as  
82 amended by this act. No certificate of need application will be  
83 considered submitted to the office unless a current letter of intent,

84 specific to the proposal and in compliance with this subsection, is on  
85 file with the office for at least sixty days. A current letter of intent is a  
86 letter of intent that has been on file at the office no more than one  
87 hundred twenty days, except that an applicant may request a one-time  
88 extension of a letter of intent of up to an additional thirty days for a  
89 maximum total of up to one hundred fifty days if, prior to the  
90 expiration of the current letter of intent, the office receives a written  
91 request to so extend the letter of intent's current status. The extension  
92 request shall fully explain why an extension is requested. The office  
93 shall accept or reject the extension request not later than five business  
94 days from the date the office receives the extension request and shall  
95 so notify the applicant. Upon a showing by such facility or institution  
96 that the need for such capital program is of an emergency nature, in  
97 that the capital expenditure is necessary to comply with any federal,  
98 state or local health, fire, building or life safety code, the commissioner  
99 may waive the letter of intent requirement, provided such request shall  
100 be submitted at least ten business days before the proposed initiation  
101 date of the project. The commissioner shall grant, modify or deny such  
102 request not later than ninety days or not later than ten business days,  
103 as the case may be, of receipt of such request, except as provided for in  
104 this section. Upon the request of the applicant, the review period may  
105 be extended for an additional fifteen days if the office has requested  
106 additional information subsequent to the commencement of the review  
107 period. The commissioner may extend the review period for a  
108 maximum of thirty days if the applicant has not filed, in a timely  
109 manner, information deemed necessary by the office. Failure of the  
110 office to act upon such request within such review period shall be  
111 deemed approval of such request. The ninety-day review period,  
112 pursuant to this section, for an application filed by a hospital, as  
113 defined in section 19a-490, as amended, and licensed as a short-term  
114 acute care general hospital or a children's hospital by the Department  
115 of Public Health or an affiliate of such a hospital or any combination  
116 thereof, shall not apply if, in the certificate of need application or  
117 request, the hospital or applicant projects either (A) that, for the first  
118 three years of operation taken together, the total impact of the proposal

119 on the operating budget of the hospital or an affiliate or any  
120 combination thereof will exceed one per cent of the actual operating  
121 expenses of the hospital for the most recently completed fiscal year as  
122 filed with the office, or (B) that the total capital expenditure for the  
123 project will exceed fifteen million dollars. If the office determines that  
124 an application is not subject to the ninety-day review period pursuant  
125 to this subsection, it shall remain so excluded for the entire period of  
126 that application, even if the application or circumstances change and  
127 the application no longer meets the stated terms of the exclusion. The  
128 office shall adopt regulations, in accordance with chapter 54, to  
129 establish an expedited hearing process to be used to review requests  
130 by any facility or institution for approval of a capital expenditure to  
131 establish an energy conservation program or to comply with  
132 requirements of any federal, state or local health, fire, building or life  
133 safety code or final court order. The office shall adopt regulations in  
134 accordance with the provisions of chapter 54 to provide for the waiver  
135 of a hearing, for any part of a request by a facility or institution for a  
136 capital expenditure, provided such facility or institution and the office  
137 agree upon such waiver.

138 (3) The office shall comply with the public notice provisions of  
139 subdivision (4) of subsection (a) of section 19a-638, as amended by this  
140 act, and shall hold a public hearing with respect to any complete  
141 certificate of need application filed under this section, if: (A) The  
142 proposal has associated total capital expenditures or total capital costs  
143 that exceed twenty million dollars for land, building or nonclinical  
144 equipment acquisition, new building construction or building  
145 renovation; (B) the proposal has associated total capital expenditures  
146 per unit or total capital costs per unit that exceed [one] three million  
147 dollars for the purchase, lease or donation acceptance of major medical  
148 equipment; (C) the proposal is for the purchase, lease or donation  
149 acceptance of equipment utilizing technology that is new or being  
150 introduced into the state, including scanning equipment,  
151 cineangiography equipment, a linear accelerator or other similar  
152 equipment; or (D) three individuals or an individual representing an

153 entity comprised of five or more people submit a request, in writing,  
154 that a public hearing be held on the proposal and such request is  
155 received by the office not later than twenty-one calendar days after the  
156 office deems the certificate of need application complete. At least two  
157 weeks' notice of such public hearing shall be given to the applicant, in  
158 writing, and to the public by publication in a newspaper having a  
159 substantial circulation in the area served by the applicant. At the  
160 discretion of the office, such hearing shall be held in Hartford or in the  
161 area so served or to be served.

162 (c) Each person or provider, other than a health care or state health  
163 care facility or institution subject to subsection (a) of this section,  
164 proposing to purchase, lease, accept donation of or replace (1) major  
165 medical equipment with a capital expenditure in excess of [four  
166 hundred thousand] three million dollars, or (2) a CT scanner, PET  
167 scanner, PET/CT scanner, MRI scanner, cineangiography equipment,  
168 linear accelerator or other similar equipment utilizing technology that  
169 is new or being introduced into the state, shall submit a request for  
170 approval of any such purchase, lease, donation or replacement  
171 pursuant to the provisions of subsection (a) of this section. In  
172 determining the capital cost or expenditure for an application under  
173 this section or section 19a-638, as amended by this act, the office shall  
174 use the greater of (A) the fair market value of the equipment as if it  
175 were to be used for full-time operation, whether or not the equipment  
176 is to be used, shared or rented on a part-time basis, or (B) the total  
177 value or estimated value determined by the office of any capitalized  
178 lease computed for a three-year period. Each method shall include the  
179 costs of any service or financing agreements plus any other cost  
180 components or items the office specifies in regulations, adopted in  
181 accordance with chapter 54, or deems appropriate.

182 (d) Notwithstanding the provisions of section 19a-638, as amended  
183 by this act, or subsection (a) of this section, no community health  
184 center, as defined in section 19a-490a, shall be subject to the provisions  
185 of said section 19a-638, as amended by this act, or subsection (a) of this  
186 section if the community health center is: (1) Proposing a capital

187 expenditure not exceeding [one] three million dollars; (2) exclusively  
188 providing primary care or dental services; and (3) either (A) one-third  
189 or more of the cost of the proposed project is financed by the state of  
190 Connecticut, (B) the proposed project is receiving funds from the  
191 Department of Public Health, or (C) the proposed project is located in  
192 an area designated by the federal Health Resources and Services  
193 Administration as a health professional shortage area, a medically  
194 underserved area or an area with a medically underserved population.  
195 Each community health center seeking an exemption under this  
196 subsection shall provide the office with documentation verifying to the  
197 satisfaction of the office, qualification for this exemption. Each  
198 community health center proposing to provide any service other than  
199 a primary care or dental service at any location, including a designated  
200 community health center location, shall first obtain a certificate of need  
201 for such additional service in accordance with this section and section  
202 19a-638, as amended by this act. Each satellite, subsidiary or affiliate of  
203 a federally qualified health center, in order to qualify under this  
204 exemption, shall: (i) Be part of a federally qualified health center, that  
205 meets the requirements of this subsection; (ii) exclusively provide  
206 primary care or dental services; and (iii) be located in a health  
207 professional shortage area or a medically underserved area. If the  
208 subsidiary, satellite or affiliate does not so qualify, it shall obtain a  
209 certificate of need.

210 (e) Notwithstanding the provisions of section 19a-638, as amended  
211 by this act, subsection (a) of section 19a-639a, as amended by this act,  
212 or subsection (a) of this section, no school-based health care center  
213 shall be subject to the provisions of section 19a-638, as amended by this  
214 act, or subsection (a) of this section if the center: (1) Is or will be  
215 licensed by the Department of Public Health as an outpatient clinic; (2)  
216 proposes capital expenditures not exceeding [one] three million dollars  
217 and does not exceed such amount; (3) once operational, continues to  
218 operate and provide services in accordance with the department's  
219 licensing standards for comprehensive school-based health centers;  
220 and (4) is or will be located entirely on the property of a functioning

221 school.

222 (f) In conducting its activities under this section, section 19a-638, as  
223 amended by this act, or under both sections, the office may hold  
224 hearings on applications of a similar nature at the same time.

225 Sec. 3. Subsection (c) of section 19a-639a of the 2006 supplement to  
226 the general statutes is repealed and the following is substituted in lieu  
227 thereof (*Effective from passage*):

228 (c) Each health care facility, institution or provider that proposes to  
229 purchase, lease or accept donation of a CT scanner, PET scanner,  
230 PET/CT scanner, MRI scanner, cineangiography equipment or a linear  
231 accelerator shall be exempt from certificate of need review pursuant to  
232 sections 19a-638, as amended by this act, and 19a-639, as amended by  
233 this act, if such facility, institution or provider (1) provides to the office  
234 satisfactory evidence that it purchased or leased such equipment for  
235 under four hundred thousand dollars on or before July 1, 2005, and  
236 such equipment was in operation on or before July 1, 2006, or (2)  
237 obtained, on or before July 1, 2005, from the office, a certificate of need  
238 or a determination that a certificate of need was not required for the  
239 purchase, lease or donation acceptance of such equipment.

240 Sec. 4. Subsection (a) of section 19a-639b of the general statutes is  
241 repealed and the following is substituted in lieu thereof (*Effective July*  
242 *1, 2006*):

243 (a) The Commissioner of the Office of Health Care Access or the  
244 commissioner's designee may grant an exemption from the  
245 requirements of section 19a-638, as amended by this act, or subsection  
246 (a) of section 19a-639, as amended by this act, or both, for any  
247 nonprofit facility, institution or provider seeking to engage in any  
248 activity, other than the termination of a service or a facility, otherwise  
249 subject to said section or subsection if:

250 (1) The nonprofit facility, institution or provider is proposing a  
251 capital expenditure of not more than [one] three million dollars and

252 the expenditure does not in fact exceed [one] three million dollars;

253 (2) The activity meets a specific service need identified by a state  
254 agency or department and confirmed as a current need by the Office of  
255 Health Care Access; and

256 (3) The commissioner, executive director, chairman or Chief Court  
257 Administrator of the state agency or department that has identified the  
258 specific need confirms, in writing, to the office that (A) the agency or  
259 department has identified a specific need with a detailed description of  
260 that need and that the agency or department believes that the need  
261 continues to exist, (B) the activity in question meets all or part of the  
262 identified need and specifies how much of that need the proposal  
263 meets, (C) in the case where the activity is the relocation of services,  
264 the agency or department has determined that the needs of the area  
265 previously served will continue to be met in a better or satisfactory  
266 manner and specifies how that is to be done, (D) in the case where the  
267 activity is the transfer of all or part of the ownership or control of a  
268 facility or institution, the agency or department has investigated the  
269 proposed change and the person or entity requesting the change and  
270 has determined that the change would be in the best interests of the  
271 state and the patients or clients, and (E) the activity will be cost-  
272 effective and well managed.

273 Sec. 5. Section 19a-639c of the 2006 supplement to the general  
274 statutes is repealed and the following is substituted in lieu thereof  
275 (*Effective July 1, 2006*):

276 Notwithstanding the provisions of section 19a-638, as amended by  
277 this act, or section 19a-639, as amended by this act, the office may  
278 waive the requirements of those sections and grant a certificate of need  
279 to any health care facility or institution or provider or any state health  
280 care facility or institution or provider proposing to replace major  
281 medical equipment, a CT scanner, PET scanner, PET/CT scanner, MRI  
282 scanner, cineangiography equipment or a linear accelerator if:

283 (1) The health care facility or institution or provider has previously

284 obtained a certificate of need for the equipment to be replaced;

285 (2) The replacement value or expenditure for the replacement  
286 equipment is not more than the original cost plus an increase of ten per  
287 cent for each twelve-month period that has elapsed since the date of  
288 the original certificate of need; and

289 (3) The replacement value or expenditure is less than [two] three  
290 million dollars.

291 Sec. 6. Subsection (a) of section 19a-653 of the 2006 supplement to  
292 the general statutes is repealed and the following is substituted in lieu  
293 thereof (*Effective July 1, 2006*):

294 (a) (1) Any person or health care facility or institution that owns,  
295 operates or is seeking to acquire major medical equipment costing over  
296 [four hundred thousand] three million dollars, or scanning equipment,  
297 cineangiography equipment, a linear accelerator or other similar  
298 equipment utilizing technology that is developed or introduced into  
299 the state on or after October 1, 2005, or any person or health care  
300 facility or institution that is required to file data or information under  
301 any public or special act or under this chapter or sections 19a-486 to  
302 19a-486h, inclusive, or any regulation adopted or order issued under  
303 this chapter or said sections, which fails to so file within prescribed  
304 time periods, shall be subject to a civil penalty of up to one thousand  
305 dollars a day for each day such information is missing, incomplete or  
306 inaccurate. Any civil penalty authorized by this section shall be  
307 imposed by the Office of Health Care Access in accordance with  
308 subsections (b) to (e), inclusive, of this section.

309 (2) If a person or health care facility or institution is unsure whether  
310 a certificate of need is required under section 19a-638, as amended by  
311 this act, or section 19a-639, as amended by this act, or under both  
312 sections, it shall send a letter to the office describing the project and  
313 requesting that the office make such a determination. A person making  
314 a request for a determination as to whether a certificate of need, waiver  
315 or exemption is required shall provide the office with any information

316 the office requests as part of its determination process.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2006</i>	19a-638(a)(4)
Sec. 2	<i>July 1, 2006</i>	19a-639
Sec. 3	<i>from passage</i>	19a-639a(c)
Sec. 4	<i>July 1, 2006</i>	19a-639b(a)
Sec. 5	<i>July 1, 2006</i>	19a-639c
Sec. 6	<i>July 1, 2006</i>	19a-653(a)

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Health Care Access, Off.	GF - Revenue Loss	Minimal	Minimal

Note: GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

This bill exempts from certificate of need (CON) review

- capital expenditures greater than \$1 million but less than or equal to \$3 million; or
- acquisition of major medical equipment valued greater than \$400,000 but less than or equal to \$3 million.

It also limits a waiver of CON requirements for entities that provided evidence by 7/1/05 of the purchase or lease of certain equipment<sup>1</sup> to those entities having put the equipment into operation before 7/1/06.

These changes will result in a minimal decrease (6-8) in the number of annual CON reviews conducted by the Office of Health Care Access (OHCA). A corresponding minimal revenue decrease to the General Fund will also result.<sup>2</sup>

<sup>1</sup> CT, PET or CT/PET scanner, MRI scanner, cineangiography equipment or a linear accelerator values less than \$400,000.

<sup>2</sup> A filing fee of \$400 is collected when CON requests involve capital expenditures for major medical equipment, imaging equipment or a linear accelerator costing more than \$400,000 but less than or equal to \$1 million. A filing fee of \$1,000 plus .05

**House "A"** reinstates a waiver from CON review for entities that provided evidence to the OHCA by 7/1/05 of the purchase or lease of certain equipment, provided the equipment is put into operation by 7/1/06. The original bill would have required operation by 7/1/05. A majority of the 10 CON reviews that would have occurred in FY 07 under the terms of the original bill will be avoided given this change. A one-time workload decrease and minimal revenue loss will result.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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percent of the total project cost is paid when an applicant seeks to make a capital expenditure in excess of \$1 million.

**OLR Bill Analysis****HB 5468 (as amended by House "A")\******AN ACT CONCERNING CERTIFICATE OF NEED CAPITAL EXPENDITURE THRESHOLDS.*****SUMMARY:**

This bill raises to \$3 million the capital and major medical equipment expenditure threshold that triggers an Office of Healthcare Access (OHCA) certificate of need (CON) review. The current threshold is \$1 million for capital costs and \$400,000 for major medical equipment.

The higher threshold does not affect the acquisition of imaging equipment, such as a CT scanner, which is subject to CON review regardless of cost. But the bill conditions the existing CON exemption for imaging equipment purchased or leased before July 1, 2005 by specifying that it must be in operation before July 1, 2006.

CON is a regulatory process for reviewing health care facilities' proposed capital expenditures, equipment acquisitions, new services, service terminations, ownership changes, and decreases in bed capacity. Generally, CON is OHCA's formal determination that a facility's proposal is needed.

\*House Amendment "A" changes, from July 1, 2005 to July 1, 2006, the date by which imaging equipment must be in operation in order to obtain a CON exemption.

EFFECTIVE DATE: July 1, 2006 for the higher CON threshold; upon passage for the provision affecting CON exemption for imaging equipment.

**INCREASED THRESHOLDS**

In addition to raising thresholds for CON review, the bill raises thresholds that (1) permit exemptions from CON and (2) trigger civil penalties.

Current law permits OHCA to waive CON requirements for facilities and providers that want to replace major medical equipment or imaging equipment for which they already obtained a CON if the replacement equipment costs, or is valued at, less than \$2 million. The bill raises this figure to \$3 million.

Current law subjects health care facilities and providers that own, operate, or seek to acquire major medical equipment costing over \$400,000 to civil penalties of \$1,000 for each day they fail to report required information to OHCA. The bill raises the threshold for the equipment to \$3 million.

**BACKGROUND*****Related Bill***

SB 386 (File 333) makes several changes in the CON process. But it does not change the \$2 million threshold for exempting replacement equipment.

**COMMITTEE ACTION**

Public Health Committee

Joint Favorable

Yea 23      Nay 0      (03/17/2006)